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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/242,257	09/07/1999	JEAN GROLLET	RICHE4827.01	9828
26694	7590	12/11/2003	EXAMINER	
VENABLE, BAETJER, HOWARD AND CIVILETTI, LLP			CORBIN, ARTHUR L	
P.O. BOX 34385				
WASHINGTON, DC 20043-9998			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/24/25

Applicant(s)

GROLLET

Examiner

ARTHUR L. GORDIN

Group Art Unit

1161

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

☒ Responsive to communication(s) filed on 9-22-03

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

☒ Claim(s) 11-15, 24, 27, 29-56

is/are pending in the application.

Of the above claim(s) 30-56

is/are withdrawn from consideration.

☐ Claim(s)

is/are allowed.

☒ Claim(s) 11-15, 24, 27, 29

is/are rejected.

☐ Claim(s)

is/are objected to.

☐ Claim(s)

are subject to restriction or election requirement

## Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☒ All ☐ Some\* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

☒ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other \_\_\_\_\_

Office Action Summary

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 27, 2003 has been entered.
2. Newly submitted claims 30-56 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The composition in claims 11-15, 24, 27 and 29 can be used in a process materially different from that claimed in claims 30-47 and 53, e.g. a process in which the composition is mixed with other food ingredients. The claimed composition does not require use or application thereof by the apparatus in claims 48-52, and the apparatus could be used to apply a coating composition other than the claimed composition, e.g., a chocolate or wax coating composition. The claimed composition can be used to treat food products other than those claimed in claims 54-56, e.g. fruit or vegetable products.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 54-56 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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4. Claims 15, 24, 27 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 15, 24, 27 and 29 are indefinite in not reciting what food additives are intended. Will all food additives work in applicant's composition? Correction: <sup>are</sup> ~~are~~ required without new matter.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 11, 15, 24, 27 and 29 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Duffy et al (5,202,137).

Applicant is referred to paragraph No. 7, Paper No. 13.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al.

Applicant is referred to paragraph 8, Paper No. 23.

9. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duffy et al in view of Merory.

Applicant is referred to paragraph No. 9, Paper No. 23.

10. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers


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for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh  
December 3, 2003



ARTHUR L. CORBIN  
PRIMARY EXAMINER  
12-5-03